

108TH CONGRESS  
2D SESSION

# H. R. 5419

To amend the National Telecommunications and Information Administration Organization Act to facilitate the reallocation of spectrum from governmental to commercial users; to improve, enhance, and promote the Nation's homeland security, public safety, and citizen activated emergency response capabilities through the use of enhanced 911 services, to further upgrade Public Safety Answering Point capabilities and related functions in receiving E-911 calls, and to support in the construction and operation of a ubiquitous and reliable citizen activated system; and to provide that funds received as universal service contributions under section 254 of the Communications Act of 1934 and the universal service support programs established pursuant thereto are not subject to certain provisions of title 31, United States Code, commonly known as the Antideficiency Act, for a period of time.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 20, 2004

Mr. UPTON introduced the following bill; which was referred to the Committee on Energy and Commerce

NOVEMBER 20, 2004

The Committee on Energy and Commerce discharged; considered and passed

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## A BILL

To amend the National Telecommunications and Information Administration Organization Act to facilitate the reallocation of spectrum from governmental to commercial users; to improve, enhance, and promote the Nation's homeland security, public safety, and citizen activated emergency response capabilities through the use of enhanced 911 services, to further upgrade Public Safety Answering

Point capabilities and related functions in receiving E-911 calls, and to support in the construction and operation of a ubiquitous and reliable citizen activated system; and to provide that funds received as universal service contributions under section 254 of the Communications Act of 1934 and the universal service support programs established pursuant thereto are not subject to certain provisions of title 31, United States Code, commonly known as the Antideficiency Act, for a period of time.

1       *Be it enacted by the Senate and House of Representa-*  
 2       *tives of the United States of America in Congress assembled,*

3                               **TITLE I—E-911**

4       **SEC. 101. SHORT TITLE.**

5               This title may be cited as the “Ensuring Needed Help  
 6 Arrives Near Callers Employing 911 Act of 2004” or the  
 7 “ENHANCE 911 Act of 2004”.

8       **SEC. 102. FINDINGS.**

9               The Congress finds that—

10               (1) for the sake of our Nation’s homeland secu-  
 11               rity and public safety, a universal emergency tele-  
 12               phone number (911) that is enhanced with the most  
 13               modern and state-of-the-art telecommunications ca-  
 14               pabilities possible should be available to all citizens  
 15               in all regions of the Nation;

1           (2) enhanced emergency communications re-  
2       quire Federal, State, and local government resources  
3       and coordination;

4           (3) any funds that are collected from fees im-  
5       posed on consumer bills for the purposes of funding  
6       911 services or enhanced 911 should go only for the  
7       purposes for which the funds are collected; and

8           (4) enhanced 911 is a high national priority  
9       and it requires Federal leadership, working in co-  
10      operation with State and local governments and with  
11      the numerous organizations dedicated to delivering  
12      emergency communications services.

13 **SEC. 103. PURPOSES.**

14       The purposes of this title are—

15           (1) to coordinate 911 services and E-911 serv-  
16       ices, at the Federal, State, and local levels; and

17           (2) to ensure that funds collected on tele-  
18       communications bills for enhancing emergency 911  
19       services are used only for the purposes for which the  
20       funds are being collected.

21 **SEC. 104. COORDINATION OF E-911 IMPLEMENTATION.**

22       Part C of title I of the National Telecommunications  
23      and Information Administration Organization Act (47  
24      U.S.C. 901 et seq.) is amended by adding at the end the  
25      following:

1 **“SEC. 158. COORDINATION OF E-911 IMPLEMENTATION.**

2 “(a) E-911 IMPLEMENTATION COORDINATION OF-  
3 FICE.—

4 “(1) ESTABLISHMENT.—The Assistant Sec-  
5 retary and the Administrator of the National High-  
6 way Traffic Safety Administration shall—

7 “(A) establish a joint program to facilitate  
8 coordination and communication between Fed-  
9 eral, State, and local emergency communica-  
10 tions systems, emergency personnel, public safe-  
11 ty organizations, telecommunications carriers,  
12 and telecommunications equipment manufactur-  
13 ers and vendors involved in the implementation  
14 of E-911 services; and

15 “(B) create an E-911 Implementation Co-  
16 ordination Office to implement the provisions of  
17 this section.

18 “(2) MANAGEMENT PLAN.—The Assistant Sec-  
19 retary and the Administrator shall jointly develop a  
20 management plan for the program established under  
21 this section. Such plan shall include the organiza-  
22 tional structure and funding profiles for the 5-year  
23 duration of the program. The Assistant Secretary  
24 and the Administrator shall, within 90 days after  
25 the date of enactment of this Act, submit the man-  
26 agement plan to the Committees on Energy and

1 Commerce and Appropriations of the House of Rep-  
2 resentatives and the Committees on Commerce,  
3 Science, and Transportation and Appropriations of  
4 the Senate.

5 “(3) PURPOSE OF OFFICE.—The Office shall—

6 “(A) take actions, in concert with coordi-  
7 nators designated in accordance with subsection  
8 (b)(3)(A)(ii), to improve such coordination and  
9 communication;

10 “(B) develop, collect, and disseminate in-  
11 formation concerning practices, procedures, and  
12 technology used in the implementation of E-  
13 911 services;

14 “(C) advise and assist eligible entities in  
15 the preparation of implementation plans re-  
16 quired under subsection (b)(3)(A)(iii);

17 “(D) receive, review, and recommend the  
18 approval or disapproval of applications for  
19 grants under subsection (b); and

20 “(E) oversee the use of funds provided by  
21 such grants in fulfilling such implementation  
22 plans.

23 “(4) REPORTS.—The Assistant Secretary and  
24 the Administrator shall provide a joint annual report  
25 to Congress by the first day of October of each year

1 on the activities of the Office to improve coordina-  
2 tion and communication with respect to the imple-  
3 mentation of E-911 services.

4 “(b) PHASE II E-911 IMPLEMENTATION GRANTS.—

5 “(1) MATCHING GRANTS.—The Assistant Sec-  
6 retary and the Administrator, after consultation with  
7 the Secretary of Homeland Security and the Chair-  
8 man of the Federal Communications Commission,  
9 and acting through the Office, shall provide grants  
10 to eligible entities for the implementation and oper-  
11 ation of Phase II E-911 services.

12 “(2) MATCHING REQUIREMENT.—The Federal  
13 share of the cost of a project eligible for a grant  
14 under this section shall not exceed 50 percent. The  
15 non-Federal share of the cost shall be provided from  
16 non-Federal sources.

17 “(3) COORDINATION REQUIRED.—In providing  
18 grants under paragraph (1), the Assistant Secretary  
19 and the Administrator shall require an eligible entity  
20 to certify in its application that—

21 “(A) in the case of an eligible entity that  
22 is a State government, the entity—

23 “(i) has coordinated its application  
24 with the public safety answering points (as  
25 such term is defined in section 222(h)(4)

1 of the Communications Act of 1934) lo-  
2 cated within the jurisdiction of such entity;

3 “(ii) has designated a single officer or  
4 governmental body of the entity to serve as  
5 the coordinator of implementation of E-  
6 911 services, except that such designation  
7 need not vest such coordinator with direct  
8 legal authority to implement E-911 serv-  
9 ices or manage emergency communications  
10 operations;

11 “(iii) has established a plan for the  
12 coordination and implementation of E-911  
13 services; and

14 “(iv) has integrated telecommuni-  
15 cations services involved in the implemen-  
16 tation and delivery of phase II E-911 serv-  
17 ices; or

18 “(B) in the case of an eligible entity that  
19 is not a State, the entity has complied with  
20 clauses (i), (iii), and (iv) of subparagraph (A),  
21 and the State in which it is located has com-  
22 plied with clause (ii) of such subparagraph.

23 “(4) CRITERIA.—The Assistant Secretary and  
24 the Administrator shall jointly issue regulations  
25 within 180 days after the date of enactment of the

1        ENHANCE 911 Act of 2004, after a public com-  
2        ment period of not less than 60 days, prescribing the  
3        criteria for selection for grants under this section,  
4        and shall update such regulations as necessary. The  
5        criteria shall include performance requirements and  
6        a timeline for completion of any project to be fi-  
7        nanced by a grant under this section.

8        “(c) DIVERSION OF E-911 CHARGES.—

9                “(1) DESIGNATED E-911 CHARGES.—For the  
10       purposes of this subsection, the term ‘designated E-  
11       911 charges’ means any taxes, fees, or other charges  
12       imposed by a State or other taxing jurisdiction that  
13       are designated or presented as dedicated to deliver  
14       or improve E-911 services.

15               “(2) CERTIFICATION.—Each applicant for a  
16       matching grant under this section shall certify to the  
17       Assistant Secretary and the Administrator at the  
18       time of application, and each applicant that receives  
19       such a grant shall certify to the Assistant Secretary  
20       and the Administrator annually thereafter during  
21       any period of time during which the funds from the  
22       grant are available to the applicant, that no portion  
23       of any designated E-911 charges imposed by a  
24       State or other taxing jurisdiction within which the  
25       applicant is located are being obligated or expended

1       for any purpose other than the purposes for which  
2       such charges are designated or presented during the  
3       period beginning 180 days immediately preceding  
4       the date of the application and continuing through  
5       the period of time during which the funds from the  
6       grant are available to the applicant.

7               “(3) CONDITION OF GRANT.—Each applicant  
8       for a grant under this section shall agree, as a con-  
9       dition of receipt of the grant, that if the State or  
10      other taxing jurisdiction within which the applicant  
11      is located, during any period of time during which  
12      the funds from the grant are available to the appli-  
13      cant, obligates or expends designated E-911 charges  
14      for any purpose other than the purposes for which  
15      such charges are designated or presented, all of the  
16      funds from such grant shall be returned to the Of-  
17      fice.

18              “(4) PENALTY FOR PROVIDING FALSE INFOR-  
19      MATION.—Any applicant that provides a certification  
20      under paragraph (1) knowing that the information  
21      provided in the certification was false shall—

22                      “(A) not be eligible to receive the grant  
23                      under subsection (b);

1           “(B) return any grant awarded under sub-  
2           section (b) during the time that the certification  
3           was not valid; and

4           “(C) not be eligible to receive any subse-  
5           quent grants under subsection (b).

6           “(d) AUTHORIZATION; TERMINATION.—

7           “(1) AUTHORIZATION.—There are authorized to  
8           be appropriated to the Department of Transpor-  
9           tation, for the purposes of grants under the joint  
10          program operated under this section with the De-  
11          partment of Commerce, not more than  
12          \$250,000,000 for each of the fiscal years 2005  
13          through 2009, not more than 5 percent of which for  
14          any fiscal year may be obligated or expended for ad-  
15          ministrative costs.

16          “(2) TERMINATION.—The provisions of this  
17          section shall cease to be effective on October 1,  
18          2009.

19          “(e) DEFINITIONS.—As used in this section:

20               “(1) OFFICE.—The term ‘Office’ means the E-  
21               911 Implementation Coordination Office.

22               “(2) ADMINISTRATOR.—The term ‘Adminis-  
23               trator’ means the Administrator of the National  
24               Highway Traffic Safety Administration.

25               “(3) ELIGIBLE ENTITY.—

1           “(A) IN GENERAL.—The term ‘eligible en-  
2           tity’ means a State or local government or a  
3           tribal organization (as defined in section 4(l) of  
4           the Indian Self-Determination and Education  
5           Assistance Act (25 U.S.C. 450b(l))).

6           “(B) INSTRUMENTALITIES.—Such term in-  
7           cludes public authorities, boards, commissions,  
8           and similar bodies created by one or more eligi-  
9           ble entities described in subparagraph (A) to  
10          provide E-911 services.

11          “(C) EXCEPTION.—Such term does not in-  
12          clude any entity that has failed to submit the  
13          most recently required certification under sub-  
14          section (c) within 30 days after the date on  
15          which such certification is due.

16          “(4) E-911 SERVICES.—The term ‘E-911 serv-  
17          ices’ means both phase I and phase II enhanced 911  
18          services, as described in section 20.18 of the Com-  
19          mission’s regulations (47 C.F.R. 20.18), as in effect  
20          on the date of enactment of the ENHANCE 911  
21          Act of 2004, or as subsequently revised by the Fed-  
22          eral Communications Commission.

23          “(5) PHASE II E-911 SERVICES.—The term  
24          ‘phase II E-911 services’ means only phase II en-  
25          hanced 911 services, as described in such section

1       20.18 (47 C.F.R. 20.18), as in effect on such date,  
2       or as subsequently revised by the Federal Commu-  
3       nications Commission.

4               “(6) STATE.—The term ‘State’ means any  
5       State of the United States, the District of Columbia,  
6       Puerto Rico, the Northern Mariana Islands, and any  
7       territory or possession of the United States.”.

8       **SEC. 105. GAO STUDY OF STATE AND LOCAL USE OF 911**  
9               **SERVICE CHARGES.**

10       (a) IN GENERAL.—Within 60 days after the date of  
11       enactment of this Act, the Comptroller General shall ini-  
12       tiate a study of—

13               (1) the imposition of taxes, fees, or other  
14       charges imposed by States or political subdivisions  
15       of States that are designated or presented as dedi-  
16       cated to improve emergency communications serv-  
17       ices, including 911 services or enhanced 911 serv-  
18       ices, or related to emergency communications serv-  
19       ices operations or improvements; and

20               (2) the use of revenues derived from such taxes,  
21       fees, or charges.

22       (b) REPORT.—Within 18 months after initiating the  
23       study required by subsection (a), the Comptroller General  
24       shall transmit a report on the results of the study to the  
25       Senate Committee on Commerce, Science, and Transpor-

1 tation and the House of Representatives Committee on  
2 Energy and Commerce setting forth the findings, conclu-  
3 sions, and recommendations, if any, of the study, includ-  
4 ing—

5 (1) the identity of each State or political sub-  
6 division that imposes such taxes, fees, or other  
7 charges; and

8 (2) the amount of revenues obligated or ex-  
9 pended by that State or political subdivision for any  
10 purpose other than the purposes for which such  
11 taxes, fees, or charges were designated or presented.

12 **SEC. 106. REPORT ON THE DEPLOYMENT OF E-911 PHASE II**  
13 **SERVICES BY TIER III SERVICE PROVIDERS.**

14 Within 90 days after the date of enactment of this  
15 Act, the Federal Communications Commission shall sub-  
16 mit a report to the Committee on Energy and Commerce  
17 of the House of Representatives and the Committee on  
18 Commerce, Science, and Transportation of the Senate de-  
19 tailing—

20 (1) the number of tier III commercial mobile  
21 service providers that are offering phase II E-911  
22 services;

23 (2) the number of requests for waivers from  
24 compliance with the Commission's phase II E-911

1 service requirements received by the Commission  
2 from such tier III providers;

3 (3) the number of waivers granted or denied by  
4 the Commission to such tier III providers;

5 (4) how long each waiver request remained  
6 pending before it was granted or denied;

7 (5) how many waiver requests are pending at  
8 the time of the filing of the report;

9 (6) when the pending requests will be granted  
10 or denied;

11 (7) actions the Commission has taken to reduce  
12 the amount of time a waiver request remains pend-  
13 ing; and

14 (8) the technologies that are the most effective  
15 in the deployment of phase II E-911 services by  
16 such tier III providers.

17 **SEC. 107. FCC REQUIREMENTS FOR CERTAIN TIER III CAR-**  
18 **RIERS.**

19 (a) IN GENERAL.—The Federal Communications  
20 Commission shall act on any petition filed by a qualified  
21 Tier III carrier requesting a waiver of compliance with the  
22 requirements of section 20.18(g)(1)(v) of the Commis-  
23 sion's rules (47 C.F.R. 20.18(g)(1)(v)) within 100 days  
24 after the Commission receives the petition. The Commis-  
25 sion shall grant the waiver of compliance with the require-

1 ments of section 20.18(g)(1)(v) of the Commission’s rules  
 2 (47 C.F.R. 20.18(g)(1)(v)) requested by the petition if it  
 3 determines that strict enforcement of the requirements of  
 4 that section would result in consumers having decreased  
 5 access to emergency services.

6 (b) QUALIFIED TIER III CARRIER DEFINED.—In  
 7 this section, the term “qualified Tier III carrier” means  
 8 a provider of commercial mobile service (as defined in sec-  
 9 tion 332(d) of the Communications Act of 1934 (47  
 10 U.S.C. 332(d)) that had 500,000 or fewer subscribers as  
 11 of December 31, 2001.

## 12 **TITLE II—SPECTRUM** 13 **RELOCATION**

### 14 **SEC. 201. SHORT TITLE.**

15 This title may be cited as the “Commercial Spectrum  
 16 Enhancement Act”.

### 17 **SEC. 202. RELOCATION OF ELIGIBLE FEDERAL ENTITIES** 18 **FOR THE REALLOCATION OF SPECTRUM FOR** 19 **COMMERCIAL PURPOSES.**

20 Section 113(g) of the National Telecommunications  
 21 and Information Administration Organization Act (47  
 22 U.S.C. 923(g)) is amended by striking paragraphs (1)  
 23 through (3) and inserting the following:

24 “(1) ELIGIBLE FEDERAL ENTITIES.—Any Fed-  
 25 eral entity that operates a Federal Government sta-

1       tion assigned to a band of frequencies specified in  
2       paragraph (2) and that incurs relocation costs be-  
3       cause of the reallocation of frequencies from Federal  
4       use to non-Federal use shall receive payment for  
5       such costs from the Spectrum Relocation Fund, in  
6       accordance with section 118 of this Act. For pur-  
7       poses of this paragraph, Federal power agencies ex-  
8       empted under subsection (c)(4) that choose to relo-  
9       cate from the frequencies identified for reallocation  
10      pursuant to subsection (a), are eligible to receive  
11      payment under this paragraph.

12           “(2) ELIGIBLE FREQUENCIES.—The bands of  
13      eligible frequencies for purposes of this section are  
14      as follows:

15           “(A) the 216–220 megahertz band, the  
16           1432–1435 megahertz band, the 1710–1755  
17           megahertz band, and the 2385–2390 megahertz  
18           band of frequencies; and

19           “(B) any other band of frequencies reallo-  
20           cated from Federal use to non-Federal use after  
21           January 1, 2003, that is assigned by competi-  
22           tive bidding pursuant to section 309(j) of the  
23           Communications Act of 1934 (47 U.S.C.  
24           309(j)), except for bands of frequencies pre-  
25           viously identified by the National Telecommuni-

1 cations and Information Administration in the  
2 Spectrum Reallocation Final Report, NTIA  
3 Special Publication 95–32 (1995).

4 “(3) DEFINITION OF RELOCATION COSTS.—For  
5 purposes of this subsection, the term ‘relocation  
6 costs’ means the costs incurred by a Federal entity  
7 to achieve comparable capability of systems, regard-  
8 less of whether that capability is achieved by relo-  
9 cating to a new frequency assignment or by utilizing  
10 an alternative technology. Such costs include—

11 “(A) the costs of any modification or re-  
12 placement of equipment, software, facilities, op-  
13 erating manuals, training costs, or regulations  
14 that are attributable to relocation;

15 “(B) the costs of all engineering, equip-  
16 ment, software, site acquisition and construc-  
17 tion costs, as well as any legitimate and pru-  
18 dent transaction expense, including outside con-  
19 sultants, and reasonable additional costs in-  
20 curred by the Federal entity that are attrib-  
21 utable to relocation, including increased recur-  
22 ring costs associated with the replacement fa-  
23 cilities;

24 “(C) the costs of engineering studies, eco-  
25 nomic analyses, or other expenses reasonably

1 incurred in calculating the estimated relocation  
2 costs that are provided to the Commission pur-  
3 suant to paragraph (4) of this subsection;

4 “(D) the one-time costs of any modifica-  
5 tion of equipment reasonably necessary to ac-  
6 commodate commercial use of such frequencies  
7 prior to the termination of the Federal entity’s  
8 primary allocation or protected status, when the  
9 eligible frequencies as defined in paragraph (2)  
10 of this subsection are made available for private  
11 sector uses by competitive bidding and a Fed-  
12 eral entity retains primary allocation or pro-  
13 tected status in those frequencies for a period  
14 of time after the completion of the competitive  
15 bidding process; and

16 “(E) the costs associated with the acceler-  
17 ated replacement of systems and equipment if  
18 such acceleration is necessary to ensure the  
19 timely relocation of systems to a new frequency  
20 assignment.

21 “(4) NOTICE TO COMMISSION OF ESTIMATED  
22 RELOCATION COSTS.—

23 “(A) The Commission shall notify the  
24 NTIA at least 18 months prior to the com-  
25 mencement of any auction of eligible fre-

1           quencies defined in paragraph (2). At least 6  
2           months prior to the commencement of any such  
3           auction, the NTIA, on behalf of the Federal en-  
4           tities and after review by the Office of Manage-  
5           ment and Budget, shall notify the Commission  
6           of estimated relocation costs and timelines for  
7           such relocation.

8           “(B) Upon timely request of a Federal en-  
9           tity, the NTIA shall provide such entity with in-  
10          formation regarding an alternative frequency  
11          assignment or assignments to which their  
12          radiocommunications operations could be relo-  
13          cated for purposes of calculating the estimated  
14          relocation costs and timelines to be submitted  
15          to the Commission pursuant to subparagraph  
16          (A).

17          “(C) To the extent practicable and con-  
18          sistent with national security considerations,  
19          the NTIA shall provide the information re-  
20          quired by subparagraphs (A) and (B) by the ge-  
21          ographic location of the Federal entities’ facili-  
22          ties or systems and the frequency bands used  
23          by such facilities or systems.

24          “(5) NOTICE TO CONGRESSIONAL COMMITTEES  
25          AND GAO.—The NTIA shall, at the time of providing

1 an initial estimate of relocation costs to the Commis-  
2 sion under paragraph (4)(A), submit to Committees  
3 on Appropriations and Energy and Commerce of the  
4 House of Representatives for approval, to the Com-  
5 mittees on Appropriations and Commerce, Science,  
6 and Transportation of the Senate for approval, and  
7 to the Comptroller General a copy of such estimate  
8 and the timelines for relocation. Unless disapproved  
9 within 30 days, the estimate shall be approved. If  
10 disapproved, the NTIA may resubmit a revised ini-  
11 tial estimate.

12 “(6) IMPLEMENTATION OF PROCEDURES.—The  
13 NTIA shall take such actions as necessary to ensure  
14 the timely relocation of Federal entities’ spectrum-  
15 related operations from frequencies defined in para-  
16 graph (2) to frequencies or facilities of comparable  
17 capability. Upon a finding by the NTIA that a Fed-  
18 eral entity has achieved comparable capability of sys-  
19 tems by relocating to a new frequency assignment or  
20 by utilizing an alternative technology, the NTIA  
21 shall terminate the entity’s authorization and notify  
22 the Commission that the entity’s relocation has been  
23 completed. The NTIA shall also terminate such enti-  
24 ty’s authorization if the NTIA determines that the  
25 entity has unreasonably failed to comply with the

1 timeline for relocation submitted by the Director of  
2 the Office of Management and Budget under section  
3 118(d)(2)(B).”.

4 **SEC. 203. MINIMUM AUCTION RECEIPTS AND DISPOSITION**  
5 **OF PROCEEDS.**

6 (a) AUCTION DESIGN.—Section 309(j)(3) of the  
7 Communications Act of 1934 (47 U.S.C. 309(j)(3)) is  
8 amended—

9 (1) by striking “and” at the end of subpara-  
10 graph (D);

11 (2) by striking the period at the end of sub-  
12 paragraph (E) and inserting “; and”; and

13 (3) by adding at the end the following new sub-  
14 paragraph:

15 “(F) for any auction of eligible frequencies  
16 described in section 113(g)(2) of the National  
17 Telecommunications and Information Adminis-  
18 tration Organization Act (47 U.S.C. 923(g)(2)),  
19 the recovery of 110 percent of estimated reloca-  
20 tion costs as provided to the Commission pursu-  
21 ant to section 113(g)(4) of such Act.”.

22 (b) SPECIAL AUCTION PROVISIONS FOR ELIGIBLE  
23 FREQUENCIES.—Section 309(j) of such Act is further  
24 amended by adding at the end the following new para-  
25 graph:

1           “(15) SPECIAL AUCTION PROVISIONS FOR ELI-  
2       GIBLE FREQUENCIES.—

3           “(A) SPECIAL REGULATIONS.—The Com-  
4       mission shall revise the regulations prescribed  
5       under paragraph (4)(F) of this subsection to  
6       prescribe methods by which the total cash pro-  
7       ceeds from any auction of eligible frequencies  
8       described in section 113(g)(2) of the National  
9       Telecommunications and Information Adminis-  
10      tration Organization Act (47 U.S.C. 923(g)(2))  
11      shall at least equal 110 percent of the total esti-  
12      mated relocation costs provided to the Commis-  
13      sion pursuant to section 113(g)(4) of such Act.

14          “(B) CONCLUSION OF AUCTIONS CONTIN-  
15      GENT ON MINIMUM PROCEEDS.—The Commis-  
16      sion shall not conclude any auction of eligible  
17      frequencies described in section 113(g)(2) of  
18      such Act if the total cash proceeds attributable  
19      to such spectrum are less than 110 percent of  
20      the total estimated relocation costs provided to  
21      the Commission pursuant to section 113(g)(4)  
22      of such Act. If the Commission is unable to  
23      conclude an auction for the foregoing reason,  
24      the Commission shall cancel the auction, return  
25      within 45 days after the auction cancellation

1 date any deposits from participating bidders  
2 held in escrow, and absolve such bidders from  
3 any obligation to the United States to bid in  
4 any subsequent reacution of such spectrum.

5 “(C) AUTHORITY TO ISSUE PRIOR TO DE-  
6 AUTHORIZATION.—In any auction conducted  
7 under the regulations required by subparagraph  
8 (A), the Commission may grant a license as-  
9 signed for the use of eligible frequencies prior  
10 to the termination of an eligible Federal entity’s  
11 authorization. However, the Commission shall  
12 condition such license by requiring that the li-  
13 censee cannot cause harmful interference to  
14 such Federal entity until such entity’s author-  
15 ization has been terminated by the National  
16 Telecommunications and Information Adminis-  
17 tration.”.

18 (c) DEPOSIT OF PROCEEDS.—Paragraph (8) of sec-  
19 tion 309(j) of the Communications Act of 1934 (47 U.S.C.  
20 309(j)) is amended—

21 (1) in subparagraph (A), by inserting “or sub-  
22 paragraph (D)” after “subparagraph (B)”; and

23 (2) by adding at the end the following new sub-  
24 paragraph:

1                   “(D) DISPOSITION OF CASH PROCEEDS.—  
2                   Cash proceeds attributable to the auction of any  
3                   eligible frequencies described in section  
4                   113(g)(2) of the National Telecommunications  
5                   and Information Administration Organization  
6                   Act (47 U.S.C. 923(g)(2)) shall be deposited in  
7                   the Spectrum Relocation Fund established  
8                   under section 118 of such Act, and shall be  
9                   available in accordance with that section.”.

10 **SEC. 204. ESTABLISHMENT OF FUND AND PROCEDURES.**

11           Part B of the National Telecommunications and In-  
12 formation Administration Organization Act is amended by  
13 adding after section 117 (47 U.S.C. 927) the following  
14 new section:

15 **“SEC. 118. SPECTRUM RELOCATION FUND.**

16           “(a) ESTABLISHMENT OF SPECTRUM RELOCATION  
17 FUND.—There is established on the books of the Treasury  
18 a separate fund to be known as the ‘Spectrum Relocation  
19 Fund’ (in this section referred to as the ‘Fund’), which  
20 shall be administered by the Office of Management and  
21 Budget (in this section referred to as ‘OMB’), in consulta-  
22 tion with the NTIA.

23           “(b) CREDITING OF RECEIPTS.—The Fund shall be  
24 credited with the amounts specified in section

1 309(j)(8)(D) of the Communications Act of 1934 (47  
2 U.S.C. 309(j)(8)(D)).

3 “(c) USED TO PAY RELOCATION COSTS.—The  
4 amounts in the Fund from auctions of eligible frequencies  
5 are authorized to be used to pay relocation costs, as de-  
6 fined in section 113(g)(3) of this Act, of an eligible Fed-  
7 eral entity incurring such costs with respect to relocation  
8 from those frequencies.

9 “(d) FUND AVAILABILITY.—

10 “(1) APPROPRIATION.—There are hereby ap-  
11 propriated from the Fund such sums as are required  
12 to pay the relocation costs specified in subsection  
13 (c).

14 “(2) TRANSFER CONDITIONS.—None of the  
15 funds provided under this subsection may be trans-  
16 ferred to any eligible Federal entity—

17 “(A) unless the Director of OMB has de-  
18 termined, in consultation with the NTIA, the  
19 appropriateness of such costs and the timeline  
20 for relocation; and

21 “(B) until 30 days after the Director of  
22 OMB has submitted to the Committees on Ap-  
23 propriations and Energy and Commerce of the  
24 House of Representatives for approval, to the  
25 Committees on Appropriations and Commerce,

1 Science, and Transportation of the Senate for  
2 approval, and to the Comptroller General a de-  
3 tailed plan describing specifically how the sums  
4 transferred from the Fund will be used to pay  
5 relocation costs in accordance with such sub-  
6 section and the timeline for such relocation.

7 Unless disapproved within 30 days, the amounts in  
8 the Fund shall be available immediately. If the plan  
9 is disapproved, the Director may resubmit a revised  
10 plan.

11 “(3) REVERSION OF UNUSED FUNDS.—Any  
12 auction proceeds in the Fund that are remaining  
13 after the payment of the relocation costs that are  
14 payable from the Fund shall revert to and be depos-  
15 ited in the general fund of the Treasury not later  
16 than 8 years after the date of the deposit of such  
17 proceeds to the Fund.

18 “(e) TRANSFER TO ELIGIBLE FEDERAL ENTITIES.—

19 “(1) TRANSFER.—

20 “(A) Amounts made available pursuant to  
21 subsection (d) shall be transferred to eligible  
22 Federal entities, as defined in section 113(g)(1)  
23 of this Act.

24 “(B) An eligible Federal entity may receive  
25 more than one such transfer, but if the sum of

1 the subsequent transfer or transfers exceeds 10  
2 percent of the original transfer—

3 “(i) such subsequent transfers are  
4 subject to prior approval by the Director of  
5 OMB as required by subsection (d)(2)(A);

6 “(ii) the notice to the committees con-  
7 taining the plan required by subsection  
8 (d)(2)(B) shall be not less than 45 days  
9 prior to the date of the transfer that  
10 causes such excess above 10 percent;

11 “(iii) such notice shall include, in ad-  
12 dition to such plan, an explanation of need  
13 for such subsequent transfer or transfers;  
14 and

15 “(iv) the Comptroller General shall,  
16 within 30 days after receiving such plan,  
17 review such plan and submit to such com-  
18 mittees an assessment of the explanation  
19 for the subsequent transfer or transfers.

20 “(C) Such transferred amounts shall be  
21 credited to the appropriations account of the el-  
22 igible Federal entity which has incurred, or will  
23 incur, such costs, and shall, subject to para-  
24 graph (2), remain available until expended.

1           “(2) RETRANSFER TO FUND.—An eligible Fed-  
2       eral entity that has received such amounts shall re-  
3       port its expenditures to OMB and shall transfer any  
4       amounts in excess of actual relocation costs back to  
5       the Fund immediately after the NTIA has notified  
6       the Commission that the entity’s relocation is com-  
7       plete, or has determined that such entity has unrea-  
8       sonably failed to complete such relocation in accord-  
9       ance with the timeline required by subsection  
10      (d)(2)(A).”.

11   **SEC. 205. TELECOMMUNICATIONS DEVELOPMENT FUND.**

12       Section 714(f) of the Communications Act of 1934  
13   (47 U.S.C. 614(f)) is amended to read as follows:

14       “(f) LENDING AND CREDIT OPERATIONS.—Loans or  
15   other extensions of credit from the Fund shall be made  
16   available to an eligible small business on the basis of—

17           “(1) the analysis of the business plan of the eli-  
18       gible small business;

19           “(2) the reasonable availability of collateral to  
20       secure the loan or credit extension;

21           “(3) the extent to which the loan or credit ex-  
22       tension promotes the purposes of this section; and

23           “(4) other lending policies as defined by the  
24       Board.”.

1 **SEC. 206. CONSTRUCTION.**

2       Nothing in this title is intended to modify section  
3 1062(b) of the National Defense Authorization Act for  
4 Fiscal Year 2000 (Public Law 106–65).

5 **SEC. 207. ANNUAL REPORT.**

6       The National Telecommunications and Information  
7 Administration shall submit an annual report to the Com-  
8 mittees on Appropriations and Energy and Commerce of  
9 the House of Representatives, the Committees on Appro-  
10 priations and Commerce, Science, and Transportation of  
11 the Senate, and the Comptroller General on—

12           (1) the progress made in adhering to the  
13 timelines applicable to relocation from eligible fre-  
14 quencies required under section 118(d)(2)(A) of the  
15 National Telecommunications and Information Ad-  
16 ministration Organization Act, separately stated on  
17 a communication system-by-system basis and on an  
18 auction-by-auction basis; and

19           (2) with respect to each relocated communica-  
20 tion system and auction, a statement of the estimate  
21 of relocation costs required under section 113(g)(4)  
22 of such Act, the actual relocations costs incurred,  
23 and the amount of such costs paid from the Spec-  
24 trum Relocation Fund.

1 **SEC. 208. PRESERVATION OF AUTHORITY; NTIA REPORT**  
2 **REQUIRED.**

3 (a) SPECTRUM MANAGEMENT AUTHORITY RE-  
4 TAINED.—Except as provided with respect to the bands  
5 of frequencies identified in section 113(g)(2)(A) of the Na-  
6 tional Telecommunications and Information Administra-  
7 tion Organization Act (47 U.S.C. 923(g)(2)(A)) as amend-  
8 ed by this title, nothing in this title or the amendments  
9 made by this title shall be construed as limiting the Fed-  
10 eral Communications Commission’s authority to allocate  
11 bands of frequencies that are reallocated from Federal use  
12 to non-Federal use for unlicensed, public safety, shared,  
13 or non-commercial use.

14 (b) NTIA REPORT REQUIRED.—Within 1 year after  
15 the date of enactment of this Act, the Administrator of  
16 the National Telecommunications and Information Ad-  
17 ministration shall submit to the Energy and Commerce  
18 Committee of the House of Representatives and the Com-  
19 merce, Science, and Transportation Committee of the Sen-  
20 ate a report on various policy options to compensate Fed-  
21 eral entities for relocation costs when such entities’ fre-  
22 quencies are allocated by the Commission for unlicensed,  
23 public safety, shared, or non-commercial use.

1 **SEC. 209. COMMERCIAL SPECTRUM LICENSE POLICY RE-**  
2 **VIEW.**

3 (a) EXAMINATION.—The Comptroller General shall  
4 examine national commercial spectrum license policy as  
5 implemented by the Federal Communications Commission,  
6 and shall report its findings to the Senate Committee on  
7 Commerce, Science, and Transportation and the House of  
8 Representatives Committee on Energy and Commerce  
9 within 270 days.

10 (b) CONTENT.—The report shall address each of the  
11 following:

12 (1) An estimate of the respective proportions of  
13 electromagnetic spectrum capacity that have been  
14 assigned by the Federal Communications Commis-  
15 sion—

16 (A) prior to enactment of section 309(j) of  
17 the Communications Act of 1934 (47 U.S.C.  
18 309(j)) providing to the Commission's competi-  
19 tive bidding authority,

20 (B) after enactment of that section using  
21 the Commission's competitive bidding authority,  
22 and

23 (C) by means other than competitive bid-  
24 ding,

25 and a description of the classes of licensees assigned  
26 under each method.

1           (2) The extent to which requiring entities to ob-  
2       tain licenses through competitive bidding places  
3       those entities at a competitive or financial disadvan-  
4       tage to offer services similar to entities that did not  
5       acquire licenses through competitive bidding.

6           (3) The effect, if any, of the use of competitive  
7       bidding and the resulting diversion of licensees' fi-  
8       nancial resources on the introduction of new services  
9       including the quality, pace, and scope of the offering  
10      of such services to the public.

11          (4) The effect, if any, of participation in com-  
12      petitive bidding by incumbent spectrum license hold-  
13      ers as applicants or investors in an applicant, includ-  
14      ing a discussion of any additional effect if such ap-  
15      plicant qualified for bidding credits as a designated  
16      entity.

17          (5) The effect on existing license holders and  
18      consumers of services offered by these providers of  
19      the Administration's Spectrum License User Fee  
20      proposal contained in the President's Budget of the  
21      United States Government for Fiscal Year 2004  
22      (Budget, page 299; Appendix, page 1046), and an  
23      evaluation of whether the enactment of this proposal  
24      could address, either in part or in whole, any pos-

1       sible competitive disadvantages described in para-  
2       graph (2).

3       (c) FCC ASSISTANCE.—The Federal Communica-  
4       tions Commission shall provide information and assist-  
5       ance, as necessary, to facilitate the completion of the ex-  
6       amination required by subsection (a).

## 7       **TITLE III—UNIVERSAL SERVICE**

### 8       **SEC. 301. SHORT TITLE.**

9       This title may be cited as the “Universal Service  
10      Antideficiency Temporary Suspension Act”.

### 11      **SEC. 302. APPLICATION OF CERTAIN TITLE 31 PROVISIONS**

#### 12                      **TO UNIVERSAL SERVICE FUND.**

13      (a) IN GENERAL.—During the period beginning on  
14      the date of enactment of this Act and ending on December  
15      31, 2005, section 1341 and subchapter II of chapter 15  
16      of title 31, United States Code, do not apply—

17              (1) to any amount collected or received as Fed-  
18      eral universal service contributions required by sec-  
19      tion 254 of the Communications Act of 1934 (47  
20      U.S.C. 254), including any interest earned on such  
21      contributions; nor

22              (2) to the expenditure or obligation of amounts  
23      attributable to such contributions for universal serv-  
24      ice support programs established pursuant to that  
25      section.

1       (b) POST-2005 FULFILLMENT OF PROTECTED OBLI-  
2 GATIONS.—Section 1341 and subchapter II of chapter 15  
3 of title 31, United States Code, do not apply after Decem-  
4 ber 31, 2005, to an expenditure or obligation described  
5 in subsection (a)(2) made or authorized during the period  
6 described in subsection (a).

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